

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CLIFFORD DILBERT,
Petitioner,

v.

M. MARTEL,
Respondent.

Case No. [10-cv-03396-SI](#)

**ORDER DENYING THIRD RULE 60
MOTION**

Re: Dkt. No. 27

This action for writ of habeas corpus was dismissed on June 20, 2011 because the petition was barred by the statute of limitations. This court and the Ninth Circuit denied a certificate of appealability. Petitioner's first motion for relief from the judgment under Federal Rule of Civil Procedure 60(b) was denied on July 6, 2011. (Docket No. 11.) Petitioner's second Rule 60(b)(6) motion was denied on June 27, 2014. (Docket No. 26.) The case returns for the court's attention because petitioner has filed a third Rule 60(b)(6) motion. (Docket No. 27.)

Rule 60(b)(6) is a "catchall provision" allows relief for "any other reason that justifies relief" and applies only when the reason for granting relief from a judgment is not covered by any of the other reasons specified in Rule 60(b)(1-5). *See Jones v. Ryan*, 733 F.3d 825, 839 (9th Cir. 2013). The movant "must show 'extraordinary circumstances' justifying the reopening of a final judgment." *Id.* (citation omitted).

Relief under the catch-all provision of Rule 60(b)(6) is not warranted here. The argument is just a rehash of an argument previously made and rejected in the July 6, 2011 order denying the first Rule 60(b) motion. Although petitioner offers new district court cases in support of his argument, the fact remains that the procedural default argument he makes is irrelevant to the statute of limitations problem that caused the dismissal of his habeas petition. His motion is rejected for the

1 additional reason that the motion was not made within a reasonable time. *See* Fed. R. Civ. P.
2 60(c)(1) (motion under Rule 60(b)(4-6) must be filed “within a reasonable time”). The motion for
3 relief from the judgment is DENIED. (Docket No. 27.)

4 A certificate of appealability will not issue. *See* 28 U.S.C. § 2253(c). This is not a case in
5 which “jurists of reason would find it debatable whether the petition states a valid claim of the denial
6 of a constitutional right and that jurists of reason would find it debatable whether the district court
7 was correct in its procedural [rulings]” in the Order Of Dismissal or in this order. *Slack v. McDaniel*,
8 529 U.S. 473, 484 (2000). The denial of the certificate of appealability is without prejudice to
9 petitioner seeking a certificate from the United States Court of Appeals for the Ninth Circuit.

10 **IT IS SO ORDERED.**

11 Dated: June 9, 2020



SUSAN ILLSTON
United States District Judge